IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 13359 of 2006(M)

AGAINST THE ORDER IN EP 291/2002 IN
OS.113/2001 of II ADDL.SUB COURT,THRISSUR

.....

PETITIONER:

M.S. Bhaskaran, aged 40, s/o. Sankaran, Madambi house, Baby road, P.O. Thiruvathra, Thrissur District.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

The Catholic Syrian Bank Ltd, Chavakkad branch
Chavakkad P.O. Thrissur district.

BY ADV. SRI.PETER THARAKAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- A true copy of the judgment in W.P.(C) No.17378/05 dated 13/6/05 on the file of this Hon'ble Court.

Ext.P2:- A true copy of the receipt evidencing payment of Rs.2 lakhs issued by the respondent dated 14/6/05.

Ext.P3:- A true copy of the receipt issued by the respondent dated 29/7/05.

Ext.P4:- A true copy of the receipt issued by the respondent dated 4/8/05.

Ext.P5:- A true copy of the order passed by the second Addl.Sub Court, dated 4/6/05 in E.A.1262/04 in E.P.No.291/02 in O.S.No.113/01.

Ext.P6:- A true copy of the order passed in E.A.No.894/05 in E.A.No.1262/04 in E.P.No.291/02 in O.S.No.113/01 dated 29/3/06.

/true copy/

M.SASIDHARAN NAMBIAR,J.

==========

W.P.(C) NO. 13359 OF 2006

==========

Dated this the 27th day of November,2006

JUDGMENT

Petitioner is the judgment debtor. Respondent is the decree holder. Property of the petitioner was sold in court auction and was purchased by the decree holder. As per Ext.P5 order, executing court directed delivery of the property which is challenged in this petition filed under Article 227 of the Constitution of India. Petitioner had earlier filed W.P.(C) 17378/05. Under Ext.P1 judgment, petitioner was granted an opportunity to file a representation before respondent Bank for one time settlement which has to be cleared within 45 days. The case of petitioner is that only a small portion of the decree amount remains to be cleared and the balance has been paid. According to decree holder, huge amount is still in balance.

2. It is admitted case that though a petition was filed under Rule 90 Order XXI to set aside

sale, that was dismissed. In such circumstance, the decree holder is entitled to take delivery of the property on the strength of the sale certificate. But considering the fact that the respondent decree holder is the bank, executing court is directed to adjourn the delivery for one month from this day. If petitioner pays the entire amount due to the decree holder including the interest and cost and cost of the stamp papers purchased for the sale certificate before that date, executing court may not order delivery of the property and decree holder may be directed to reconvey the property at the expense of judgment debtor.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006